LAW RIGHT 013

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AI

Texts in this edition were drafted and translated with AI assistance. Generative tools were also used for illustrations and associated media. Sources are provided for readers to consult.

What is still yours

Your pay. Your working future. Your memories.

You can work for years without knowing the criteria behind your pay. Be assessed without knowing what software has recorded about your work. Leave thousands of photographs without saying what your family may do with them. This edition makes these decisions easier to see, understand and, where necessary, challenge.

Your colleague earns more than you. Can you find out why?

The conversation starts almost by accident. A colleague mentions their pay. The amount surprises you: your jobs seem similar, with responsibilities you thought were comparable. You do the calculation in your head. Then comes the question you hesitate to ask: what explains the difference? This scene is fictional, but the legal problem is specific. How can someone establish discrimination when the information needed to demonstrate it remains with the employer?

What Europe wants to make visible

Directive (EU) 2023/970 concerns equal pay for women and men doing the same work or work of equal value. It promises neither identical pay for everyone nor unrestricted access to individual payslips. Its purpose is to make it possible to examine differences that secrecy has kept out of view. Higher pay may be justified by objective, gender-neutral criteria. Those criteria, their relevance and their actual application still need to be identified. [S1]

The real work therefore begins before the salary spreadsheet. Equal value does not necessarily mean the same job title. Skills, effort, responsibility and working conditions must be examined. Relevant interpersonal skills must not be undervalued. Conversely, an identical title does not by itself establish that actual responsibilities are comparable. The category chosen must enable a fair comparison; arbitrary groupings must not hide the gap being investigated. [S1, S2]

Pay also means more than the monthly transfer. The European definition covers basic pay and other employment-related consideration, in cash or in kind, including variable or complementary components. Comparing two take-home amounts alone can therefore mislead: working time, bonuses and benefits need to be considered on a consistent basis. The directive expresses pay levels as gross annual pay and the corresponding gross hourly pay. [S1]

What a worker will be able to request

Article 7 establishes a right to request and receive written information about individual pay and average pay levels, broken down by sex, for categories doing the same work or work of equal value. Requests may be made through workers' representatives or an equality body. Incomplete or inaccurate information can prompt requests for clarification. The response must arrive within a reasonable period and no later than two months. Employers must remind workers of this right each year. [S1]

This mechanism concerns comparable averages. It does not automatically reveal the named colleague's pay. The GDPR still applies. Where a small group could identify someone, Member States may restrict certain information to representatives, labour inspectorates or equality bodies. Privacy must be protected without making equal-pay scrutiny ineffective. [S1]

The criteria for setting pay and pay progression must also be accessible. A national option to exempt employers with fewer than fifty workers concerns progression, rather than a general exemption from equal pay. Before hiring, the text provides for information about initial pay or its range early enough to enable informed negotiation, and prohibits questions about pay history. These rules should not be turned into a uniform European requirement to state an amount in every advertisement. [S1]

The five per cent trap

A 4% gap is not permission to discriminate. The 5% threshold triggers a particular process for employers subject to reporting: a joint pay assessment with representatives where a category has an average gap

of at least 5%, the employer has not justified it through objective, gender-neutral criteria, and it has not remedied the unjustified difference within six months of the date the pay report was submitted. All three conditions must be met. Discrimination may still be challenged below that threshold. [S1]

Reporting has a separate timetable: from 7 June 2027, annually for employers with at least 250 workers and every three years for those with 150–249; from 7 June 2031, every three years for those with 100–149. The figures concern the preceding calendar year. Member States may extend reporting below one hundred workers. The absence of mandatory reporting does not remove the text's other requirements. [S1]

Information must be capable of changing the outcome

The directive provides for full compensation without a predetermined cap, covering matters including back pay, related payments, lost opportunities, non-material damage and interest. It also strengthens the evidential rules: where facts support a presumption of discrimination, the employer must rebut it. A breach of transparency duties may also shift the burden, subject to the exception for a manifestly unintentional and minor breach. National procedure and the facts of each case still matter. [S1]

In Belgium, the European deadline of 7 June 2026 must be distinguished from the measures actually adopted and their scope. The European register consulted lists six notified Belgian measures, including public-service and regional or community texts. That record does not certify complete federal transposition for private-sector employment. Regional measures do not establish that the same obligation already applies to every employer nationwide. [S3]

Belgium already has a collective mechanism: businesses habitually employing an average of at least fifty workers must analyse their pay structure every two years. The report goes to the works council or, failing that, the trade union delegation. It does not give individual workers access to colleagues' payslips, but it provides a practical starting point for discussions with staff representatives. [S10]

For a useful discussion, ask which criteria apply to your role, which comparison category is used and which pay components are included. Keep the request and the answer. Employers should start by reviewing their classifications and decisions: an explanation drafted after a challenge is no substitute for consistent criteria. The practical advance is being able to examine a difference without having to begin with a rumour.

Will a machine decide your next performance review?

Your manager opens a dashboard. A score summarises your targets, exchanges and activity. You ask why it is so low. “That is what the tool says.” This fictional scene raises a practical question: who can reconsider the conclusion, and on what information?

A score does not explain a person

Software can help organise information. The difficulty arises when its recommendation becomes decisive without meaningful scrutiny. Article 22 GDPR addresses decisions based solely on automated processing that have legal or similarly significant effects. Not every use of a dashboard automatically falls within that prohibition. But a manager who mechanically approves the result does not create genuine human involvement merely by being present. [S4, S5]

Exceptions must be assessed, not assumed: contractual necessity, legal authorisation or explicit consent, with appropriate safeguards. In employment, it is particularly important to establish whether consent can genuinely be freely given. A worker should not be reduced to accepting a tool to avoid disadvantage. Other GDPR requirements, including lawfulness, transparency and accuracy, remain relevant even where a decision is not solely automated. [S4, S5]

Suppose a system interprets a late reply as lack of commitment. Was the worker on leave, carrying out fieldwork or performing a task that left no trace in the software? These questions do not prove that all tools assess people poorly. They show why data must be checked against actual work before it affects a bonus, promotion or continued employment.

The timetable has changed; responsibilities remain

The European AI Act lists certain recruitment, promotion, dismissal and performance-assessment uses among high-risk uses. The intended purpose and classification conditions of each system must nevertheless be checked. A writing function is not the same as a system intended to evaluate staff. [S6]

The original timetable must not simply be repeated. The consolidated version of 27 July 2026, amended by Regulation (EU) 2026/1744, sets 2 December 2027 for the application of Chapter III, Sections 1–3, to systems covered by Article 6(2) and Annex III, except for Article 6(5). This postpones neither the GDPR nor the entire AI Act. The prohibition on certain systems inferring emotions at work is separate, with the medical or safety exception set out in the text. [S6]

High-risk classification does not mean prohibition. Since 2 August 2026, Article 86 has also provided, subject to its own conditions, a clear explanation of AI’s role and the main elements of certain decisions based on a high-risk system listed in Annex III. It concerns decisions with legal or similarly significant effects and an alleged adverse impact on health, safety or fundamental rights. It is not a general right to source code and applies insofar as a comparable right is not already guaranteed under Union law. [S12]

At a review, ask which data informed the assessment, what the system does and who has authority to correct its output. A useful answer should allow a specific error to be discussed. Employers must give the person conducting the review the necessary information, time and authority. A signature at the bottom of a page does not, by itself, establish human oversight.

The issue goes beyond fear of machines. A good tool can reveal an inconsistency and support a better-informed conversation. It becomes dangerous when apparent precision closes that conversation. An assessment must remain an opportunity for a person to contribute what the data missed.

Who will inherit your photographs… and who may make you speak?

A phone may hold a parent's last recorded words. A mailbox, years of exchanges. An account, photographs nobody printed. After a death, a family may want to recover these traces. Then another possibility appears: using recordings to create a voice that answers back. These are different undertakings.

Recovering a memory and creating a presence

In an interview conducted by Geneviève Simon and published by La Libre on 28 October 2026, I discussed whether a son may bring his mother back as a digital avatar. This newsletter takes the subject further with a practical question: what do we want to authorise, pass on or rule out during our lifetime? The interview is linked in the sources. [S7]

Keeping a recording, sharing a copy and generating new speech with a reconstructed voice have different implications. The first preserves a trace. The last attributes words the person never said. That distinction should guide preparations even before every legal question has been resolved.

Under recital 27, the GDPR does not apply to deceased persons' data. This does not make an account freely available for access and reuse. Exchanges may include living people's data. Photographs or texts may be protected by copyright. Service terms, inheritance rules and the rights involved need separate consideration. Technical access alone establishes no entitlement to publish or create an avatar. [S8]

Image rights provide another Belgian reference point. The FPS Economy states that they continue for twenty years after death and may be exercised by the heirs. They are separate from copyright in a photograph or recording. This does not establish a blanket permission or ban on voice imitation: the relevant rights and intended use still need to be identified. [S11]

Leaving something people can actually use

France has a particular system for post-mortem instructions described by the CNIL. It should not be presented as an identical Belgian procedure. For someone in Belgium, useful preparation starts with an inventory: which accounts, which files, which contacts and which wishes should be discussed with a notary? Wikifin highlights the importance of instructions for digital assets; practical arrangements need to reflect access and the nature of each asset. [S8, S9]

You can distinguish photographs to keep within the family, correspondence to remain private, and uses of your image or voice you wish to authorise or refuse. These instructions do not replace an assessment of other people's rights or the relevant service rules. They do, however, give relatives guidance that would otherwise be missing. Avoid putting passwords in a document intended for circulation: arrange a secure, appropriate means of transmission.

An avatar raises two distinct questions: does the person speaking to it know it is AI, and could its words be mistaken for a genuine recording of the deceased? Since 2 August 2026, Article 50 of the AI Act has imposed separate duties for informing people about AI interaction and disclosing certain audio or video constituting deepfakes. Clearly artistic or fictional works have an adapted disclosure rule, not a general exemption. Scope depends on the role and context; personal, non-professional use falls outside the definition of deployer. A disclosure does not resolve the other rights in the material used. [S13]

We readily discuss passing on a home. We hesitate over a few minutes of recorded speech. Yet “keep this recording, but do not make me say new things” can express an important wish. Technology makes imitation possible; it cannot decide what the person would have wanted.

A musical interlude: Missing You

The player presents the two complete Missing You films in descending order of YouTube views. Afterwards, choose Spotify or Apple Music, or discover Absences in French: Réponds-moi first, followed by the other videos by descending views. You remain in control of sound and pause.

Music, voices and images produced with AI. This artistic provenance accompanies the music player.

Sources and reference points

S1 · Directive (UE) 2023/970, articles 3 à 12, 16, 18 et 34

S2 · SPF Emploi, projet BE-MAGIC

S3 · EUR-Lex, mesures nationales notifiées pour la directive 2023/970

S4 · APD, décision individuelle automatisée ; RGPD, articles 5, 6 et 22

S5 · Groupe Article 29, WP251rev.01, décision automatisée et profilage, version du 6 février 2018

S6 · Règlement IA 2024/1689, version consolidée du 27 juillet 2026 après règlement 2026/1744

S7 · Geneviève Simon, entretien avec Christophe Boeraeve, La Libre, 28 octobre 2026, sur les avatars numériques

S8 · CNIL, Mort numérique, 31 octobre 2025 ; RGPD considérant27 ; droits distincts

S9 · Wikifin FSMA, Pourquoi planifier votre succession, mise à jour 21 avril 2026

S10 · SPF Emploi, égalité femmes-hommes : analyse bisannuelle des rémunérations

S11 · SPF Économie, droit à l'image, mise à jour 3 décembre 2020

S12 · Commission européenne, AI Act Service Desk, article 86

S13 · Commission européenne, AI Act Service Desk, articles 50 et 113